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No. 93-799

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

STANDARD INSURANCE COMPANY,
Petitioner,

v.

JEROME SAKLAD,
Respondent.

On Petition for Writ of Certiorari to the
Court of Appeals of the State of Oregon

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Under the preemption provision of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1144(a), may the State of Oregon provide a broad exemption to its general garnishment statute that shelters payments necessary to a subsistence income for the debtor, when those payments may come from a wide variety of sources, including, but not limited to, disability plans covered by ERISA?

PARTIES TO THE CASE

All parties to the case appear in the caption.

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OPINIONS BELOW

The opinions of the Oregon Circuit Court, denying respondent's claim of exemption from garnishment, are unreported. They are reprinted in the Appendix to the Petition ("Pet. App.") at 6-9. The opinion of the Oregon Court of Appeals, reversing the Circuit Court and upholding respondent's claim of exemption, is reported at 119 Or. App. 91, 849 P.2d 1150, and is reprinted at Pet. App. 1-4. The

order of the Supreme Court of Oregon denying review is noted at 317 Or. 486, 858 P.2d 876, and is reprinted at Pet. App. 5.

JURISDICTION

This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257. The Supreme Court of Oregon denied discretionary review on August 24, 1993, and the petition for writ of certiorari was filed on November 19, 1993.

STATUTES INVOLVED

1. The Oregon statute governing execution of judgments against property, Or. Rev. Stat. § 23.160, provides in pertinent part as follows:

> 23.160. Leviable property generally; selectable exemptions. (1) All property, including franchises, or rights or interest therein, of the judgment debtor, shall be liable to an execution, except as provided in this section and in other statutes granting exemptions from execution. If selected and reserved by the judgment debtor or the agent of the judgment debtor at the time of the levy, or as soon thereafter before sale thereof as the same shall be known to the judgment debtor, the following property, or rights or interest therein of the judgment debtor, except as provided in ORS 23.220, shall be exempt from execution:
>
> * * * *
>
> (j) The debtor's right to receive, or property that is traceable to:
>
> * * * *
>
> (C) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor.

2. Section 514(a) of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1144(a), provides as follows:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

STATEMENT OF THE CASE

Oregon, like every other state, has a statute providing for the execution of money judgments. Like every other state, Oregon also has made the policy determination that judgment debtors should be allowed to retain certain minimal resources necessary to a subsistence living, and, to that end, has exempted small amounts of assets and income from the execution of judgments. This case concerns the validity of Oregon's determination that disabled judgment debtors, who are unable to earn income by working at a job, should be allowed to retain the resources necessary for their survival, even in the face of a large tort judgment against them.

1. In the late 1970's, respondent Jerome Saklad became insured under a group long-term disability policy issued by petitioner Standard Insurance Company to Industrial Electronics Engineers, Inc. ("IEE"), his employer at the time. After he contracted Legionnaires' Disease, respondent submitted a disability claim to Standard under the IEE policy in October 1979. He was ultimately paid about

$200,000 in benefits, including a lump-sum payment of $80,000.

Respondent later become insured under a second disability policy issued by Standard to Master Plating, Inc., a business owned and operated by members of his family. In 1987, respondent submitted a disability claim to Standard under the Master Plating policy, stating that he suffered from cardiomyopathy, a terminal degenerative heart disease. It is uncontested that respondent's second disability claim is valid, and that Standard is obligated to pay respondent disability benefits under the terms of the Master Plating policy. Nevertheless, respondent's second disability claim prompted an investigation by Standard, and, based on this investigation, Standard filed suit against respondent in the United States District Court for the Central District of California, seeking to recover the benefits previously paid to him under the IEE policy. The District Court eventually ruled that Standard was entitled to the return of benefits paid to Saklad under the IEE policy from 1980 through 1984, plus prejudgment interest, and entered a judgment against Saklad for over $360,000.

2. Standard then registered the judgment in the Circuit Court of Multnomah County, Oregon, where its principal place of business is located, and attempted to garnish for itself the benefits that it was obligated to pay Saklad under the Master Plating policy. Saklad argued that his benefits were exempt from garnishment under the provision of Oregon's general statute governing execution of judgments that exempts any "payment in compensation of loss of future earnings of the debtor ... to the extent reasonably necessary for the support of the debtor and any dependent of the debtor." Or. Rev. Stat. § 23.160(1)(j)(C). The Circuit Court for Multnomah County held that the garnishment was valid, notwithstanding the Oregon law,

because the Oregon statute was preempted by ERISA. Pet. App. 6-7.[1]

3. The Oregon Court of Appeals unanimously reversed, ruling that the garnishment exemption provided by Oregon law was not preempted by ERISA. *See* Pet. App. 1-4. The Court first rejected Standard's argument that preemption was compelled under the reasoning of this Court's decision in *Mackey v. Lanier Collections Agency*, 486 U.S. 825 (1988), holding that ERISA preempted a Georgia statute that specifically exempted benefits under ERISA plans from garnishment. The Court pointed out that, while *Mackey* indicated that such a specific reference to ERISA plans in a state law invariably leads to preemption, Oregon "does not treat ERISA plans differently from non-ERISA plans and so is not *automatically* preempted." Pet. App. 3 (emphasis added).

The Court of Appeals then went on to consider the significance of this Court's second holding of *Mackey*, that Georgia's general garnishment statute was not preempted by ERISA. In *Mackey*, this Court stated that Congress had generally "acknowledged and accepted" the states' practices of garnishment as a method of executing judgments, and that ERISA plans, as garnishees, were not *per se* exempt from garnishment procedures. *See Mackey*, 486 U.S. at 837. Standard argued to the Court of Appeals that, since Congress had acknowledged the practice of garnishment generally in

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[1] Saklad also argued that his benefits were exempt from garnishment under Or. Rev. Stat. § 743.050, which provides that the proceeds of insurance policies "providing benefits on account of the insured's disability" are exempt from all liability for debts of an insured, and that Standard's action in garnishing benefits that it owed to Saklad was a "prohibited transaction" under section 406 of ERISA, 29 U.S.C. § 1106. The Circuit Court rejected these arguments, and the Court of Appeals did not reach them, as it reversed on the ground set forth in the petition.

ERISA, permitting the operation of the Oregon exemption in this case would impair the garnishment procedure that Congress had approved.

The Court of Appeals concluded that Standard's argument misread *Mackey*. According to the Court, the fact that Congress, by remaining silent, had acknowledged the possibility of garnishment against ERISA welfare plans, did not mean that Congress had intended to override all state-law exemptions or limitations to that practice. The Court of Appeals reasoned that Congress must have been aware of, and accepted, the various state practices concerning garnishment, "including the practice of refusing garnishment." Pet. App. 3.

Finally, the Court of Appeals rejected Standard's argument that the Oregon garnishment exemption undermines ERISA's policy of uniform treatment of ERISA welfare benefits because Oregon judgment debtors would be able to claim the exemption for disability benefits while judgment debtors in other states might not be able to claim a similar exemption. The Court observed that Standard's argument was wide of the mark because ERISA does not mandate uniform treatment of benefits, but only uniform regulation of benefit plans. Relying on this Court's decision in *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1986), the Court of Appeals noted that the term "benefit plans," as used in ERISA's preemption provision, refers to administrative procedures governing claims processing, benefits calculation, and pay-out. Because the Oregon garnishment statute does not implicate any of Standard's procedures in these areas, the Court concluded, the possibility that disability benefits might be garnished in another state, but not in Oregon, did not raise any concern about uniformity of treatment of benefit plans. Pet. App. 4.

The Oregon Supreme Court denied discretionary review, Pet. App. 5, and Standard's petition for certiorari followed.[2]

REASONS FOR DENYING THE WRIT

The petition should be denied because it presents none of the considerations warranting review outlined in this Court's Rule 10.1. The decision of the Oregon Court of Appeals does not conflict with *Mackey* or with any of this Court's other ERISA preemption decisions. Nor is this a case where a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a federal court of appeals. *See* Sup. Ct. Rule 10.1(b). Since *Mackey*, no state supreme court or federal appellate court has held that a state's garnishment exemption for employee welfare benefits is preempted by ERISA. Finally, while the validity of a state's garnishment exemption is, in the abstract, an important issue, there is no need for this Court's intervention because the Court of Appeals resolved that issue in a way that does not impair the integrity of ERISA's regulatory scheme.

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[2] Standard has also filed another action against Saklad in the United States District Court for the Central District of California, alleging a right to equitable setoff against the benefits due under the Master Plating Policy. The District Court recently entered an order permitting Standard to deposit into the Court all funds due to Saklad under the Master Plating Policy, pending the outcome of the new action. Memorandum and Order Regarding Plaintiff's Motion for Rule 67 Deposit, *Standard Ins. Co v. Saklad*, No. CV 93-5472 RG (C.D. Cal. Jan. 5, 1994). Therefore, despite the Oregon Court of Appeals' conclusion that Saklad was entitled to an exemption from garnishment, Saklad is not currently receiving any benefits under the Master Plating policy.

A. The Decision Below is Consistent with this Court's ERISA Preemption Decisions, Including *Mackey*.

Section 514(a) of ERISA preempts state laws if they "relate to" employee benefit plans. 29 U.S.C. § 1144(a). This Court has stated that "[a] law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a *connection with* or *reference to* such a plan." *Shaw v. Delta Air Lines*, 463 U.S. 85, 96-97 (1983) (emphasis added and footnote omitted). While the reach of ERISA's preemption provision is therefore quite broad, this Court has also cautioned that it is not boundless: "Some state actions may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Id.* at 100 n.21. Thus, ERISA does not preempt state laws that merely "affect" benefit plans in some way, nor does it preempt state laws that relate only to "benefits," and not "benefit plans." *See generally Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1 (1987). Without these sensible limitations, ERISA would swallow up entire sections of state codes in a fashion wholly unanticipated, and undesired, by Congress.

Despite these limitations, Standard argues that state laws are preempted whenever they affect ERISA plans, regardless whether the laws were intended to regulate such plans, or whether the laws implicate the specific concerns that motivated Congress to enact the preemption provision. This argument goes far beyond the reach of the ERISA preemption provision, as intended by Congress and as construed by this Court. Even though Oregon's garnishment exemption may have some incidental effect on ERISA plans, just as it has on a wide range of other judgment creditors and garnishees, it is not preempted because it has neither a "reference to" nor a "connection with" ERISA plans, as this Court has used those terms in its ERISA preemption decisions.

1. The Oregon garnishment exemption does not have a "reference" to employee benefit plans because it does not single out such plans for special treatment. The Oregon statute does not mention ERISA, or ERISA plans, or even benefit plans generally. The Oregon statute simply provides a limited shelter from execution for funds paid in compensation for loss of future earnings, regardless of the source of the funds, when the money is necessary for the support of the debtor. It is irrelevant whether the funds come from an ERISA plan, a personal injury judgment, a worker's compensation award, or a payment from an individual (non-ERISA) disability insurance policy; all are subject to the Oregon garnishment exemption. As the Court of Appeals pointed out, the statute "does not treat ERISA plans differently from non-ERISA plans and so is not automatically preempted." Pet. App. 3.

This conclusion is consistent with the first part of this Court's decision in *Mackey*, where the Court "reaffirmed" the rule that state laws are preempted if they "make 'reference to' ERISA plans." 486 U.S. at 829. This Court explained that, in using the term "reference" to ERISA plans in *Shaw* and subsequent cases, it had in mind those state laws that specifically address employee welfare plans: "[W]e have virtually taken it for granted that state laws which are 'specifically designed to affect employee benefit plans' are preempted under [ERISA]" *Id.*; *see also id.* at 830 ("adhering to our precedents in this area, we hold that [the Georgia statute], which singles out ERISA employee welfare benefit plans for different treatment under state garnishment procedures, is preempted") (footnote omitted).

2. Nor does the Oregon garnishment exemption have a "connection to" ERISA plans, under any sensible reading of that term. "ERISA's preemption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities.... Pre-emption ensures that the administrative procedures of a

benefit plan will be governed by only a single set of regulations." *Fort Halifax*, 482 U.S. at 11.

The Oregon law at issue here does not implicate this concern for uniformity. It does not govern the administration of ERISA plans; nor does it require the payment of benefits, regulate vesting, or impose substantive duties or obligations on plan participants, beneficiaries, or fiduciaries. The statute does not require any plan "to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; [or] to comply with certain fiduciary standards in some States but not in others." *Id.* at 9. All the Oregon law does is provide a limited shelter for disability payments from judgment creditors, whether or not the benefits are traceable to an ERISA plan, and whether or not the judgment creditor is an ERISA plan.

Standard objects to the Oregon law on the ground that it supposedly creates "substantive rights" in ERISA participants that are not recognized by ERISA itself. *See* Pet. for Cert. 9. This argument is wide of the mark, however, because it has nothing to do with the particular concern for uniform regulation of benefit plans that informs this Court's ERISA preemption decisions. While Oregon's garnishment exemptions may not be purely "procedural," in that they do more than merely set out the procedures which must be followed in garnishment proceedings, they do not create any rights that implicate the considerations that led to the enactment of the ERISA preemption clause. The Oregon garnishment law does not, for example, create any new duty in the administration, funding, or vesting requirements of the plan running from the fiduciary or the employer to the beneficiary. *Cf. Ingersoll-Rand Co. v. McClendon*, 111 S. Ct. 478 (1990) (preempting state cause of action alleging unlawful discharge to prevent vesting of benefits); *Pilot Life Ins. Co. v. Dedaux*, 481 U.S. 41 (1987) (preempting state cause of action for improper processing of insurance benefit claim).

The fact that the judgment creditor in this case is an ERISA plan is purely coincidental to the operation of the garnishment exemption. Because Oregon has made the policy determination that disability payments needed to support the debtor should be exempt from all judgment creditors, respondent would be entitled to the same exemption if the judgment entered against him had arisen out of a contract claim, or out of an individual (non-ERISA) disability insurance policy. He would also be entitled to the exemption even if his first disability insurance policy had been an ERISA plan, but had been written by a different insurer than the one that wrote the second policy. The fact that the judgment creditor in this case happens to be an ERISA plan, and the same ERISA plan as the garnishee, is irrelevant to the operation of the Oregon statute.

Nor does the Oregon law's treatment of Standard as garnishee have anything to do with the operation of ERISA. Respondent could also claim the exemption if the payments were due to him from an individual insurance policy, or from a tort judgment that he had won as a result of an automobile accident. Thus, the exemption would operate in exactly the same way if, for example, respondent had become entitled to the disability payment as a result of an automobile accident, but had a judgment for damages entered against him in a lawsuit arising from his failure to close on a residential real estate contract.

Further, the garnishment *exemption* imposes no administrative burdens on the plan as garnishee. Unlike the situation in *Mackey*, where the ERISA plan argued (unsuccessfully) that the need to comply with garnishment proceedings imposed undue administrative burdens on the plan, the Oregon garnishment exemption does not require the plan to respond to court proceedings, to pay money into the court, or to undertake administrative processing of the garnishment order. *Cf. Mackey*, 486 U.S. at 831. Thus, there is no reason to believe that the operation of the garnishment exemption will even remotely implicate ERISA's

concern for uniform treatment of administration of ERISA plans.

The key flaw in Standard's argument is its assertion, based on a quotation from *Mackey* taken out of context, that the state law exemption must be preempted because it obstructs an ERISA plan's right "'to sue,' which implies a right to collect on money judgments." Pet. for Cert. 13. If Standard's reasoning were extended to its logical conclusion, then all state garnishment and attachment exemptions would be inconsistent with ERISA. For example, state-law homestead exemptions would be preempted, as would the typical state law placing a percentage cap on wages that may be garnished, because both obstruct a plaintiff's right to collect fully on a judgment won under ERISA.

Moreover, as this Court has noted, "'[a] cause of action on a judgment is different from that upon which the judgment was entered.'" *Huron Holding Corp. v. Lincoln Mine Operating Co.*, 313 U.S. 183, 194 (1941) (footnote and citation omitted). ERISA itself makes no provision for execution of judgments against employee welfare benefits, and so Standard is dependent on Oregon law to invoke its right to use garnishment proceedings to collect on its judgment. Nothing in the language of ERISA or any other federal law compels Oregon to offer the writ of garnishment to judgment creditors as a method of execution. But, having invoked Oregon law to claim its right to garnishment, Standard is in no position to argue that parts of the same law that it dislikes are preempted by ERISA. By seeking dispensation from Oregon's garnishment exemption, Standard is really asking for special treatment in the enforcement and collection of its judgments, but Standard, like every other judgment creditor, must take the bitter with the sweet.

3. Standard's argument is also contrary to the policy expressed in Rule 69(a) of the Federal Rules of Civil Procedure, which incorporates state law governing the execution of judgments:

> The procedure on execution, in proceedings supplementary to and in aid of a judgment, and in proceedings on and in aid of execution shall be in accordance with the practice and procedure of the state in which the district court is held, existing at the time the remedy is sought, except that any statute of the United States governs to the extent that it is applicable.

Rule 69(a) incorporates the "substantive" state-law exemptions from garnishment as well as the procedures for garnishment proceedings, even when the cause of action arises under federal law, and even when the judgment creditor is the United States. *See United States v. Miller*, 229 F.2d 839, 841 (3d Cir. 1956); *see also Fink v. O'Neil*, 106 U.S. 272, 279 (1882) (United States subject to state-law homestead exemption on execution of judgment; federal courts required to follow state law in execution of judgments). Federal policy in this matter has been the same, almost without interruption, since the Judiciary Act of 1789. *See Beers v. Haughton*, 34 U.S. (9 Pet.) 329, 360-61 (1835).

As this Court noted in *Fort Halifax*, one of the principles governing the limitation of ERISA's preemption provision is the need for "'respect for the separate spheres of governmental authority preserved in our federalist system.'" 482 U.S. at 19 (citation omitted). State law has traditionally governed executions of judgment, and federal law has, to a great degree, acknowledged and adopted that state law, even when federal law has defined the substantive rights and provided the causes of action leading to judgments. In enacting ERISA, Congress gave no indication that it intended to do what petitioner urges, to disrupt the traditional balance between state and federal law as to execution against employee welfare benefits.[3]

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[3] Congress did alter that balance with regard to execution against employee *pension* benefits, which it largely prohibited in

(continued...)

B. The Decision Below Does Not Conflict with Any Decision of a Federal Court of Appeals or State Court of Last Resort.

Even though Standard recognizes that the decision below does not actually conflict with *Mackey* or any other decision of this Court, it argues that review is warranted because the lower courts are divided in their interpretation of *Mackey*. *See, e.g.*, Pet. for Cert. 9, 15. In fact, none of the cases relied on by Standard conflicts with the decision below; they all involve either state laws specifically targeting employee benefit plans or issues remote from the one presented in this case.

1. Standard argues principally that the decision below conflicts with *In re Dyke*, 943 F.2d 1435 (5th Cir. 1991), and *Guidry v. Sheet Metal Workers International Association, Local No. 9*, No. 92-1018, 1993 U.S. App. LEXIS 28,698 (10th Cir. Nov. 4, 1993). *Amicus* Health Insurance

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[3](...continued)
section 206(d)(1) of ERISA, 29 U.S.C. § 1056(d)(1). *See Mackey*, 486 U.S. at 836-37; *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365 (1990). Section 206(d)(1) thus overrides Rule 69(a) of the Federal Rules of Civil Procedure and expressly prohibits execution of judgment against pension benefits, even when execution would be permitted by state law. By contrast, Congress remained silent with respect to execution against employee welfare benefits. When ERISA is placed against the background of Congress' traditional deference to state policy on execution of judgments, it appears unlikely that Congress intended, by this silence, to override all state exemptions protecting welfare benefits from execution of judgment. *See Mackey*, 486 U.S. at 834 ("state-law methods for collecting judgments must, as a general matter, remain undisturbed by ERISA"). As the Oregon Court of Appeals correctly observed, "[i]t does not follow that by [silently] acquiescing in garnishment Congress mandated that practice." Pet. App. 3.

Association of America also argues that the decision below conflicts with *In re Schlein*, 8 F.3d 745 (11th Cir. 1993). All these decisions are distinguishable because they concern statutes that expressly refer to employee benefit plans and treat such plans differently from sources of income not regulated by ERISA. Under a straightforward application of *Mackey*, they make "reference to," and therefore "relate to," employee benefit plans, and so they are preempted under section 1144 of ERISA. But these decisions do not cast any doubt on the validity of a broadly applicable state-law garnishment exemption that applies to a wide variety of assets and sources of income, like the law at issue here.[4]

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[4] Furthermore, both *Dyke* and *Schlein* held that the exemptions at issue were saved from preemption by another provision of ERISA, 29 U.S.C. § 1144(d), which provides that the preemption clause shall not be construed to impair or supersede "any law of the United States." In reaching this conclusion, the *Dyke* and *Schlein* courts emphasized that the Bankruptcy Code gives states the right to "opt out" of the federal scheme providing for exemptions from the bankruptcy estate and replace the federal list of exemptions with their own exemptions. *See Schlein*, 8 F.3d at 748-54; *Dyke*, 943 F.2d at 1449; *see also In re Vickers*, 954 F.2d 1426, 1429 (8th Cir.), *cert. dismissed*, 113 S. Ct. 4 (1992); *see generally* 11 U.S.C. § 522(b). States that do opt out of the federal scheme usually replace the federal exemptions with their own statutes providing generally for exemptions from execution of judgment. Thus, federal law incorporates these state-law exemptions into the Bankruptcy Code. *Cf. Shaw v. Delta Air Lines*, 463 U.S. at 102 (New York's Human Rights Law saved from preemption by § 1144(d), because preemption would impair the operation of Title VII, which required recourse to state law for enforcement).

Oregon has opted out of the federal bankruptcy exemption scheme and replaced it with its own exemptions, including the one at issue here. *See* Or. Rev. Stat. § 23.305. Thus, Oregon residents who file for bankruptcy are unquestionably entitled to

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In *Dyke*, for example, the Fifth Circuit emphasized that the Texas statute exempting pension benefits from attachment "specifically refer[red] to ERISA benefit plans." 943 F.2d at 1448. Although the statute did not use the word "ERISA," the Fifth Circuit observed that the statute covered "stock bonus, pension, profit-sharing, [and] similar plan[s]," which are "employee benefit plans" within the meaning of ERISA. *Id.* (emphasis deleted). The Court also noted that "the very purpose of [the statute] is to permit Texas debtors to exempt ERISA-qualified pension plans under the state exemption scheme." *Id.* For these reasons, the Court held that the Texas attachment statute "related to" employee benefit plans and distinguished that statute from laws of more general application that might incidentally bring benefit plans within their reach. *See id.* at 1447.[5]

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[4](...continued)
claim an exemption from garnishment for disability payments, to the extent those payments are necessary for their support. But it would be absurd for the validity of Oregon's exemption to depend on whether a particular judgment debtor has filed for bankruptcy, and such a rule would only encourage debtors to file for bankruptcy, with little benefit to Standard as a result.

[5] The reference to ERISA plans in the statute at issue in *Schlein* was even more narrowly targeted. The Florida exemption at issue there specifically sheltered pension plans qualified under sections of the Internal Revenue Code that refer to ERISA plans. The Eleventh Circuit thus had no difficulty in concluding that the Florida statute "made reference" to ERISA plans, and it described the issue in *Dyke* as "identical." 8 F.3d at 750. The Oregon exemption at issue here makes no specific reference to ERISA plans, although benefits from a few such plans, such as plans providing for disability benefits, are within its broad reach, while benefits from other kinds of ERISA plans, like pension plans and health-benefit plans, are not sheltered by the statute.

Guidry involved a similar garnishment statute that exempted the "'avails of any pension or retirement benefits, or deferred compensation plan.'" 1993 U.S. App. LEXIS 28,698 at *38 (quoting Colo. Rev. Stat. § 13-54-104(b)). The Tenth Circuit concluded that this statute was preempted "[b]ecause it is specifically applicable to ERISA pension plans," *Id.* at *39, and "because it singles out ERISA benefits for special treatment." *Id.* at *39-*40. The Tenth Circuit then went on to connect this holding to this Court's decision in *Mackey*, striking down the Georgia garnishment exemption that was targeted directly at ERISA benefit plans: "It is this singling out that preempts the Colorado anti-garnishment exemption. *Cf. Mackey*, 486 U.S. at 838 n.12." *Guidry*, *supra*, at *40 (footnote omitted).

Standard argues, however, that the decision below conflicts with *Guidry* and *Dyke* because those cases supposedly hold that a state law "relates to" an ERISA plan whenever it "implicitly encompasses" such a plan, whereas the decision below requires only that a state law not "single out ERISA plans for special treatment." Pet. for Cert. 17-19. Standard's interpretations of all three decisions are inaccurate. While the challenged state laws in *Guidry* and *Dyke* may not have specifically mentioned ERISA, they did refer specifically to ERISA *plans*, even though they did so circuitously by using language such as "avails of any pension or retirement benefits or deferred compensation plan" instead of "benefits from ERISA plans."

Standard is therefore wrong when it argues that *Guidry* and *Dyke* found that the state exemptions "related to" ERISA plans because they had a "decided impact on such plans." Pet. for Cert. at 15. In *Guidry* and *Dyke*, the Courts of Appeals concluded that the state laws "related to" ERISA plans because they singled out or made specific reference to those plans, not merely because they had some effect on them.

In any case, the decision below is distinguishable from *Guidry* and *Dyke* because the Oregon law takes an entirely different approach. Rather than addressing the source of the proceeds (*e.g.*, a benefit plan), it addresses the purpose for which the income is received (compensation because of disability), regardless of its source. Thus, benefits from an ERISA welfare plan attributable to accrued vacation pay would not be exempt from execution (unless they were payable because of disability), whereas proceeds of a personal injury award would be exempt, just like disability payments from an ERISA plan, even if the judgment had nothing to do with an ERISA plan.

Standard argues further that the Court of Appeals and other lower courts have misinterpreted *Mackey* and have been willing to find that a state law "relates to" ERISA plans *only* when the law singles out such plans. In fact, the Oregon Court of Appeals did not fall into this error. Standard seizes on one sentence in the Oregon Court of Appeals' opinion, which stated that the Oregon garnishment statute was distinguishable from the Georgia statute struck down in *Mackey* because the Georgia law specifically targeted ERISA plans. Pet. for Cert. 17. The Oregon Court of Appeals did not hold, however, that state laws that do not specifically target ERISA plans are never subject to scrutiny for preemption. It stated only that such laws are not "*automatically* preempted" under *Mackey*, as are statutes that single out ERISA plans. Pet. App. 3 (emphasis added). The Oregon Court of Appeals never suggested that a statute that attempted to regulate ERISA plans by addressing the funding or administration of ERISA plans would not be preempted merely because the statute did not specifically mention employee benefit plans. It was unnecessary for the Court of Appeals to consider such a situation, because this case does not involve a state law that attempts to regulate employee benefit plans.

2. Standard also argues that the decision below conflicts with *Iron Workers Mid-South Pension Fund v.*

Terotechnology Corp., 891 F.2d 548 (5th Cir.), *cert. denied*, 497 U.S. 1024 (1990), and *Carpenters Southern California Administrative Corporation v. El Capitan Development Company*, 53 Cal. 3d 1041, 811 P.2d 296, *cert. denied*, 112 S. Ct. 430 (1991). Pet. for Cert. 9. Those cases have little to do with the issue presented here, however.

Both *Iron Workers* and *Carpenters Southern* involved a situation where an employer had failed to pay contributions to an ERISA welfare benefit fund, and the fund then attempted to record a lien (similar to a mechanic's lien) against a third party that had no direct obligation to the fund under ERISA. In both cases, the fund relied on a state law allowing employee trust funds to proceed against property owners, without regard to whether the owner was directly liable to the fund under ERISA. In both cases, the courts held the statute to be preempted because it was specifically designed to, and did, regulate one of the core matters of ERISA, liability for funding of an employee welfare benefit plan. As the Fifth Circuit stressed in *Iron Workers*, the Louisiana statute was preempted because it attempted to interfere in one of the core concerns of ERISA, "the funding of employee benefit plans," 891 F.2d at 554, and also because it expressly referred to employee benefit plans, *id.* at 553. Similarly, in *Carpenters Southern*, the California Supreme Court held that the California statute was preempted by ERISA because it was specifically designed to affect ERISA plans, 53 Cal. 3d at 1049, 811 P.2d at 300, because it directly regulated ERISA plans by creating a funding mechanism for those plans not provided by Congress, *id.* at 1052, 811 P.2d at 301, and because it "single[d] out ERISA plans for special treatment," *id.* at 1049, 811 P.2d at 300.

Neither *Iron Workers* nor *Carpenters Southern* resembles the case at bar. The Oregon garnishment statute does not intrude into the funding or administration of ERISA plans, nor does it purport to give ERISA beneficiaries or participants greater rights in the funding or administration of

the plan, or the payment of benefits, than they would have under ERISA itself.

3. As the federal Courts of Appeals have uniformly recognized, when a state law does not specifically refer to ERISA plans, but brings such plans incidentally within its reach, the determination whether a state law is preempted by ERISA must be based on the state law's relation to the specific concerns which led Congress to enact the ERISA preemption provision. In the ERISA context, as with any other pre-emption analysis, "'the purpose of Congress is the ultimate touchstone.'" *Fort Halifax*, 482 U.S. at 8 (citations omitted). Thus, if the challenged law has little to do with the core regulatory concerns of ERISA, "the mere fact that [a] statute has some economic impact on the plan does not require that the statute be invalidated." *Rebaldo v. Cuomo*, 749 F.2d 133, 139 (2d Cir. 1984), *cert. denied*, 472 U.S 1008 (1985). This limitation on ERISA preemption is necessary because "'federal exclusivity [was] a corollary of regulatory coverage, not an independent statutory goal'" of Congress. *Martori Bros. Distributors v. James-Massengale*, 781 F.2d 1349, 1359 (9th Cir. 1986) (citation omitted). As the Second Circuit has remarked, "[a] preemption provision designed to prevent state interference with federal control of ERISA plans does not require the creation of a fully insulated legal world that excludes these plans from regulation of any purely local transaction." *Rebaldo*, 749 F.2d at 138.

While not every formulation by every court of the principles underlying ERISA preemption is identical, the basic approach taken by all the federal Courts of Appeals is essentially the same: A state law is not preempted by ERISA if it does not affect "relations among the principal ERISA entities -- the employer, the plan fiduciaries, the plan, and the beneficiaries -- as such[.]" *Sommers Drug Stores v. Corrigan Enters.*, 793 F.2d 1456, 1470 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987); *see Aetna Life Ins. Co. v. Borges*, 869 F.2d 142, 146 (2d Cir.) ("[L]aws that have been ruled preempted are those that provide an alternative cause

of action to employees to collect benefits protected by ERISA, refer specifically to ERISA plans and apply solely to them, or interfere with the calculation of benefits owed to an employee"), *cert. denied*, 493 U.S. 811 (1989); *Martori Bros.*, 781 F.2d at 1357-58 (state law preempted if it regulates "the matters regulated by ERISA: disclosure, funding, reporting, vesting, and enforcement of benefit plans"); *Firestone Tire & Rubber Co. v. Neusser*, 810 F.2d 550, 555-56 (6th Cir. 1987) (similar). Even if ERISA plans are swept within the general regulatory reach of a state statute, that law is not preempted if the law applies to persons "without regard to their status as participants in an ERISA plan." *Firestone*, 810 F.2d at 556.

Under any of these formulations, the Oregon garnishment statute would not be preempted because it does not affect the relationship of Saklad and Standard as ERISA fiduciary and beneficiary. While it so happens that, in this particular case, the judgment debtor protected by the statute is an ERISA beneficiary, and the judgment creditor is an ERISA fiduciary, that is a pure coincidence. This case is therefore analytically similar to *Sommers Drug Stores*, *supra*, where the Fifth Circuit rejected the argument that a shareholder suit brought by an employee benefit plan against the employer, based on the state law of corporate fiduciary duty, was preempted by ERISA. The Court stressed that "the shareholder's rights against the corporate director ar[o]se solely from his status as shareholder," and that it was irrelevant that "the director happens also to be a plan fiduciary and the shareholder a benefit plan[.]" 793 F.2d at 1468.

4. The approach taken by the Courts of Appeals is consistent with, and based upon, this Court's explication of the scope of ERISA preemption in *Fort Halifax Packing Co. v. Coyne*. In that case, this Court concluded that a Maine law requiring employers to provide employees with a one-time severance payment in the event of a plant closing was not preempted by ERISA because "pre-emption of the Maine

statute would not further the purpose of ERISA pre-emption." 482 U.S. at 8. After surveying Congress' concern about the complexity of administering employee benefit plans, this Court concluded that "Congress intended pre-emption to afford employers the advantages of a uniform set of administrative procedures governed by a single set of regulations[,]" *id.* at 11, not a broad-ranging immunity from state regulations of general applicability.

The concern underlying ERISA's preemption provision is remote from the issues raised by this case, which does not concern the administration of the plan at all, but only what happens to the benefits once they are due to be paid out by the plan. Oregon has not directed Standard to evaluate employee claims for disability benefits in a particular way. Rather, Oregon has made the policy decision to shelter minimal disability benefits against all creditors, including but not limited to ERISA plans. The particular concerns for uniform treatment of employee benefit plans that led to ERISA's preemption provision are not implicated by that policy decision. *See also Mackey*, 486 U.S. at 836 (distinguishing ERISA's anti-alienation provision, which has to do with "pension plan *benefits*," from ERISA's preemption provision, which has to do with benefit "*plans*"). Because Oregon's statute "creates no prospect of conflict" with ERISA, *Fort Halifax*, 482 U.S. at 19, the decision below is correct, and review by this Court is not warranted.

CONCLUSION

The writ of certiorari should be denied.

Respectfully submitted,

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